

AMENDED IN ASSEMBLY JUNE 2, 2003
AMENDED IN ASSEMBLY MAY 6, 2003
AMENDED IN ASSEMBLY APRIL 8, 2003
AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 816

**Introduced by Assembly Member Reyes
(Principal coauthors: Assembly Members Canciamilla and
Richman)**

February 20, 2003

An act to ~~add Section 9607.5 to the Public Utilities Code, and to~~
amend Section 80110 of the Water Code, relating to electric power.

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as amended, Reyes. Local publicly owned electric utilities: Public Utilities Commission: direct transactions.

(1) Existing law authorizes the Department of Water Resources to administer existing contracts for the purchase of electric power, and to sell power to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs. Existing law imposes on retail end use customers of electrical corporations and community choice aggregators nonbypassable charges to repay certain costs of the department and electrical corporations.

~~This bill, except as specified, would additionally impose on a local publicly owned electric utility that after February 1, 2001, initiates~~

~~electric service to existing or new customers in the service territory of an electrical corporation, as that territory existed on February 1, 2001, responsibility for those repayment costs, as determined by the Public Utilities Commission. The bill would require the local publicly owned electric utility to determine the appropriate method by which to recover the costs imposed from its customers. The bill would require the cost recovery mechanism to ensure that any charges payable to the department and to the electrical corporation by a retail end use customer are promptly remitted to the party entitled to payment. By imposing new responsibilities on local publicly owned electric utilities, this bill would impose a state-mandated local program.~~

~~(2) Under existing law, the commission~~ *Public Utilities Commission* has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. Existing law requires the commission to authorize direct transactions between electricity suppliers and end use customers, also known as direct access. Existing law suspends, after a period of time to be determined by the commission, the right of a retail end use customer to acquire electricity from other electric service providers pursuant to direct transactions, until the department no longer supplies electricity under those provisions. *Pursuant to these provisions, the commission has instituted a rulemaking proceeding to implement the suspension of direct access to result in a decision and order adopting cost responsibility surcharge mechanisms for municipal departing load.*

This bill would require the commission to reinstate the right of retail end use customers with a load requirement of 500 kilowatts or more to acquire electricity from other electric service providers subject to specified conditions. The bill would require the commission, in considering the procurement plan of an electrical corporation, to set the amount of direct access permitted to minimize the potential that the electrical corporation will enter into commitments that the subsequent exercise of direct access will render unnecessary or excessive. The bill would require the commission to adopt rules it determines to be necessary to implement the reinstatement of direct access, including any notice requirements imposed as a condition of direct access, and provisions to ensure the prompt recovery by an electrical corporation of costs it incurs to reinstate and administer direct access. Because a violation of a rule or order of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.



This bill would declare the intent of the Legislature to enact legislation that will conform to the decision and order of the commission adopting cost responsibility surcharge mechanisms for municipal departing load, provided that the decision and order will not result in cost shifting to bundled service customers of electrical corporations.

(3)

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, ~~including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

This bill would provide that ~~with regard to certain mandates~~ no reimbursement is required by this act for a specified reason.

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. ~~Section 9607.5 is added to the Public Utilities~~
- 2 ~~*It is the intent of the Legislature to enact subsequent legislation*~~
- 3 ~~*that will conform to the decision and order of the Public Utilities*~~
- 4 ~~*Commission adopting cost responsibility surcharge mechanisms*~~
- 5 ~~*for municipal departing load, provided that the decision and order*~~
- 6 ~~*will not result in cost shifting to bundled service customers of*~~
- 7 ~~*investor-owned electrical corporation utilities.*~~
- 8 ~~Code, to read:~~
- 9 ~~(a) (1) Except as specified in paragraph (2), to prevent cost~~
- 10 ~~shifting of recoverable costs between customers, a local publicly~~
- 11 ~~owned electric utility that, after February 1, 2004, initiates electric~~
- 12 ~~service to existing or new customers in the service territory of an~~
- 13 ~~electrical corporation, as that territory existed on February 1,~~
- 14 ~~2001, is responsible for the costs described in subdivisions (d), (e),~~
- 15 ~~(f), and (g) of Section 366.2, as determined by the commission.~~

~~(2) Notwithstanding paragraph (1), a municipality that provides electric service and annexes adjoining territory within the service territory of an electrical corporation, or any new customer of the municipality not previously served by the electrical corporation and located within adjoining territory annexed by the municipality, is not responsible for payment of the costs described in subdivisions (d), (e), (f), and (g) of Section 366.2, commencing with the date of completion of the annexation, if all of the following requirements are met:~~

~~(A) The municipality is operating its own local publicly owned utility.~~

~~(B) The municipality was serving all electric customers residing within its corporate boundaries before February 1, 2001.~~

~~(C) The municipality, on or after February 1, 2001, annexed adjoining territory within the service territory of an electrical corporation.~~

~~(D) The municipality provides all municipal services, including, but not limited to, electricity, to residents of the annexed area.~~

~~(b) The local publicly owned electric utility is not responsible for the costs described in subdivisions (d), (e), (f), and (g) of Section 366.2 when it serves new load within its exclusive electric service territory as that exclusive electric service territory existed on February 1, 2001.~~

~~(c) The local publicly owned electric utility shall determine the appropriate method by which to recover the costs imposed pursuant to this section from its customers. The cost recovery mechanism shall ensure that any charges payable to the Department of Water Resources and to the electrical corporation by a retail end use customer are promptly remitted to the party entitled to payment. Charges imposed pursuant to this section are nonbypassable.~~

SEC. 2. Section 80110 of the Water Code is amended to read:

80110. (a) The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate. Those revenue requirements may also include any advances made to the department hereunder or hereafter for

1 purposes of this division, or from the Department of Water
2 Resources Electric Power Fund, and General Fund moneys
3 expended by the department pursuant to the Governor's State of
4 Emergency Proclamation, dated January 17, 2001. For purposes
5 of this division and except as otherwise provided in this section,
6 the commission's authority as set forth in Section 451 of the Public
7 Utilities Code shall apply, except any just and reasonable review
8 under Section 451 shall be conducted and determined by the
9 department. The commission may enter into an agreement with the
10 department with respect to charges under Section 451 for purposes
11 of this division, and that agreement shall have the force and effect
12 of a financing order adopted in accordance with Article 5.5
13 (commencing with Section 840) of Chapter 4 of Part 1 of Division
14 1 of the Public Utilities Code, as determined by the commission.
15 In no case shall the commission increase the electricity charges in
16 effect on February 1, 2001, for residential customers for existing
17 baseline quantities or usage by those customers of up to 130
18 percent of existing baseline quantities, until the department has
19 recovered the costs of power it has procured for the electrical
20 corporation's retail end use customers as provided in this division.
21 (b) The commission shall reinstate the right of retail end
22 customers with a load requirement of 500 kilowatts or more to
23 acquire service from other electric service providers pursuant to
24 Article 6 (commencing with Section 360) of Chapter 2.3 of Part
25 1 of Division 1 of the Public Utilities Code , once each of the
26 following conditions are met:
27 (1) The commission has established a cost responsibility
28 surcharge for customers that opt for direct transactions. Each retail
29 end use customer that has purchased power from an electrical
30 corporation on or after February 1, 2001, shall bear a fair share of
31 the department's electricity purchase costs that are recoverable
32 from electrical corporation customers in commission-approved
33 rates including costs described in subdivisions (d), (e), (f), and (g)
34 of Section 366.2.
35 (2) The State of California has issued revenue bonds pursuant
36 to Chapter 2.5 (commencing with Section 80130).
37 (3) The electrical corporations are procuring electricity under
38 procurement plans pursuant to Section 454.5 of the Public Utilities
39 Code.

1 (4) The commission has resolved all outstanding issues in the
2 direct access phase of commission Rulemaking 02-01-011.

3 (5) The commission has adopted rules for the treatment of
4 direct access customers who voluntarily or involuntarily return to
5 electrical corporation bundled service. The rules adopted by the
6 commission shall ensure that electric corporation customers
7 receiving bundled service are indifferent to cost shifting caused by
8 direct access customers returning to bundled service.

9 (c) The department shall have the same rights with respect to
10 the payment by retail end use customers for power sold by the
11 department as do providers of power to those customers.

12 (d) The commission, in considering the procurement plan of an
13 electrical corporation, shall set the amount of direct access
14 permitted to minimize the potential that the electrical corporation
15 will enter into commitments that the subsequent exercise of direct
16 access will render unnecessary or excessive.

17 (e) The commission shall adopt rules it determines to be
18 necessary to implement the reinstatement of direct access pursuant
19 to this section, including any notice requirements imposed as a
20 condition of direct access, and provisions to ensure the prompt
21 recovery by an electrical corporation of costs it incurs to reinstate
22 and administer direct access.

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution ~~for~~
25 ~~certain~~ *because the only* costs that may be incurred by a local
26 agency or school district because in that regard this act creates a
27 new crime or infraction, eliminates a crime or infraction, or
28 changes the penalty for a crime or infraction, within the meaning
29 of Section 17556 of the Government Code, or changes the
30 definition of a crime within the meaning of Section 6 of Article
31 XIII B of the California Constitution.

32 ~~However, notwithstanding Section 17610 of the Government~~
33 ~~Code, if the Commission on State Mandates determines that this~~
34 ~~act contains other costs mandated by the state, reimbursement to~~
35 ~~local agencies and school districts for those costs shall be made~~
36 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
37 ~~4 of Title 2 of the Government Code. If the statewide cost of the~~
38 ~~claim for reimbursement does not exceed one million dollars~~

1 ~~(\$1,000,000), reimbursement shall be made from the State~~
2 ~~Mandates Claims Fund.~~

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